THE ART & SCIENCE OF JURY SELECTION

Paula Anderson
Anderson & Associates Research Services, Inc.
Cindi Nannetti
Division Chief, Maricopa County Attorney's Office
Jon Eliason
Mesa City Prosecutor

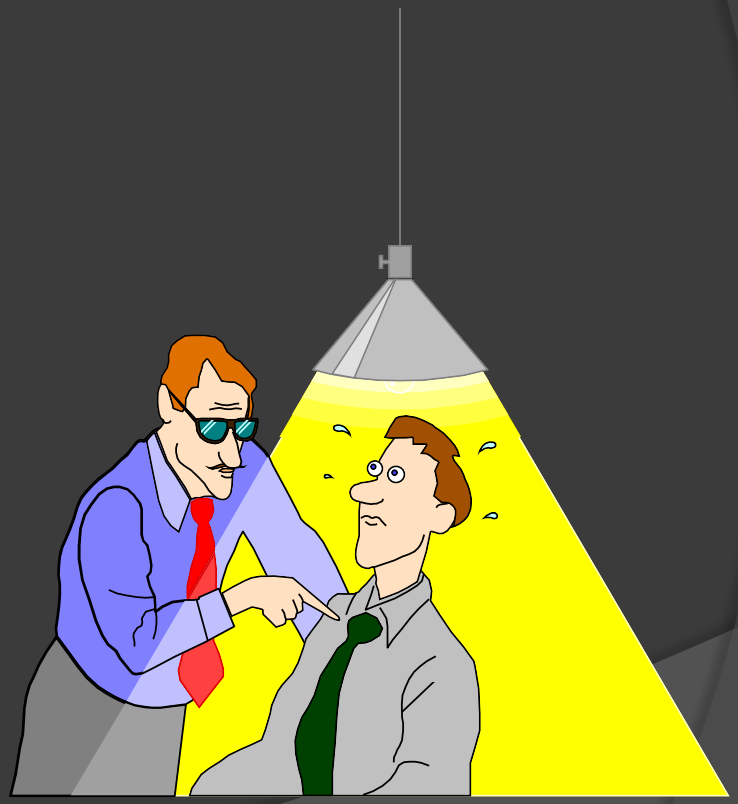
Insanity: doing the same thing over and over again and expecting different results.

Top 10 Mistakes

Are you guilty?

10. Interrogation of jurors

- Jurors should be asked questions that identify potential bias, but shouldn’t be made to feel like they are a murder suspect.



9. Bonding with just a few jurors

- It's easy to focus on the jurors who smile at you and give you all the good answers, but chances are that juror won't be around long. Besides, the other jurors get "jealous."

8. Refusal to ask the tough questions about case weaknesses

- You can't ignore the big elephant in the corner. If your case has a weakness (and <u>all</u> cases have them) then you have to address those issues in voir dire. The key is drafting a good question!

7. Allowing the Court to conduct all the voir dire

- Attorneys establish rapport and credibility with jurors during voir dire. Attorney conducted voir dire is essential and adds weight to that opening statement you spent so many hours writing and rehearsing!
- The State should be asking questions about the issues in your case.

6. Failure to ask the Court for the use of a Supplemental Juror Questionnaire

- Not that jurors lie…. but often they fail to disclose vital information because they are embarrassed or feel put on the spot. SJQs are imperative for cases involving sensitive subject matters.

5. Talking "down" to jurors

- Yes it's true that as a whole jurors read and understand info at about an 8th grade level – however, they can smell arrogance a mile away and will hold it against you and your client.

4. Failing to keep an open mind to their honest responses

- Attorneys need to practice their poker faces before voir dire. If you react negatively to an answer they give, they will either:
  - Start lying to make you happy
  - Stop answering your questions
  - Adopt an attitude of defiance

3. Failure to use good social skills

- This is the time and place to use your social skills. Smile and (if appropriate) joke with the jury panel a little. Remember, the goal is to encourage full disclosure, so they need to like and trust you.
- Think of it as a party full of strangers, work at putting them at ease and everyone will have a good time.

2. Waiting till the last minute to draft your voir dire

- Unless you have a vast data base of voir dire questions at your disposal, you should not be drafting your voir dire the night before trial.
- But if you do, call a trial consultant or other prosecutors (NDAA, APAAC) with a vast data base…..

1. Failing to believe voir dire is essential to jury selection

- "Just give me the first 12 pair of shoes that walk in the door……" That statement is pretty scary.

- The *scariest* juror is the one you know <u>nothing</u> about!

What they didn’t teach you in Law School about Jury Selection

General Principles

FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

You need to look/ act ‘squared away’ so that jurors will think

FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

- **Dress Appropriately**

FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

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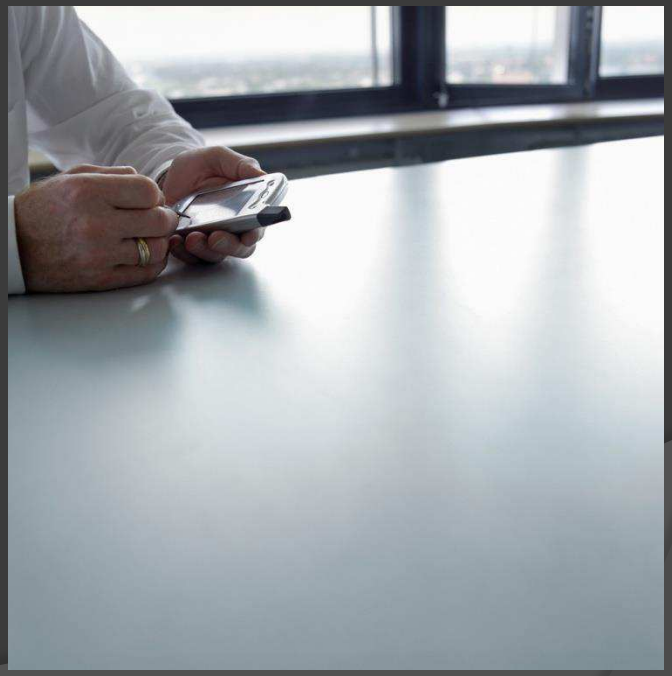
FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

Table MUST always look organized!



FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

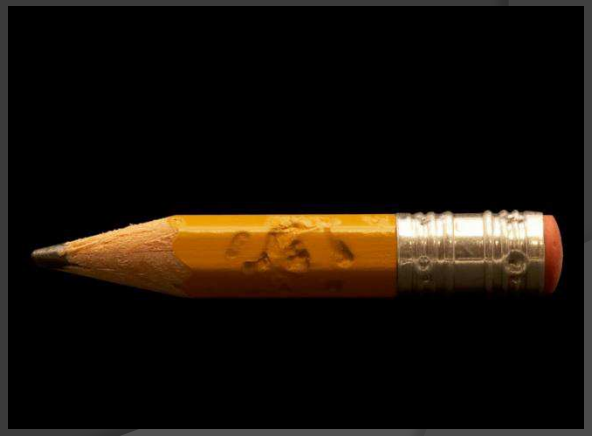
- **Make eye contact.**
- **Use plain English.**
- **Listen to jurors / judge.**
- **Present a positive image.**

FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

- **Be confident!**
  - **Jurors can sense when you are not confident, it bleeds into the rest of your case.**
  - **Appearing confident = credibility / confidence in your case because you should prevail.**
  - **Nervous / fearful behaviors (or those that can be interpreted as such) do not project credibility.**

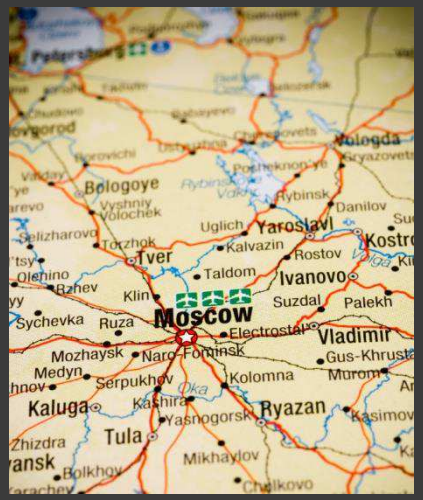
FIRST IMPRESSIONS ARE DIFFICULT TO CHANGE

- Sit up right.
- Don’t tap your fingers on table or engage in other annoying habits.
- Watch your body language.
- Do not invade juror’s space.
- Be polite to all jurors!



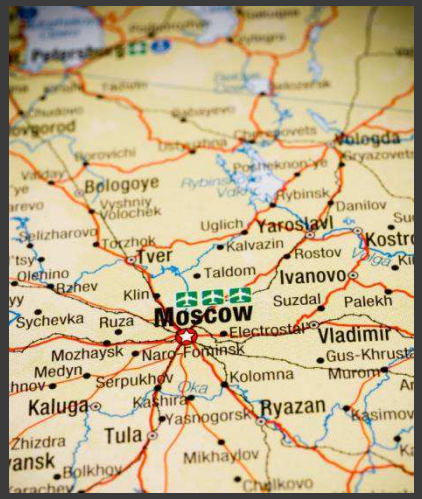
START WITH A PLAN

- Case Analysis
- Approach
- Preparation
- Execution



CASE ANALYSIS

- **Taking a hard look – write it out**
  - Understand your case
  - Strengths
  - Flaws

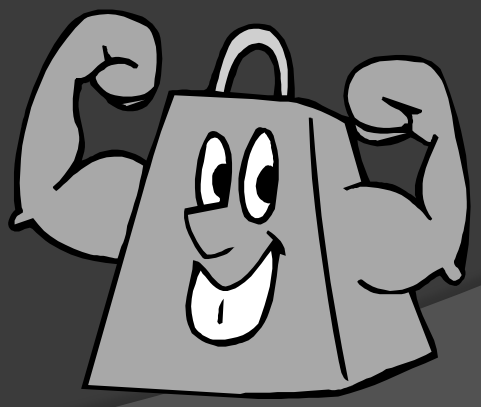


LOOKING AT THE GOOD, THE BAD AND THE UGLY

Development of Profiles

What are Your Strengths & Weaknesses?

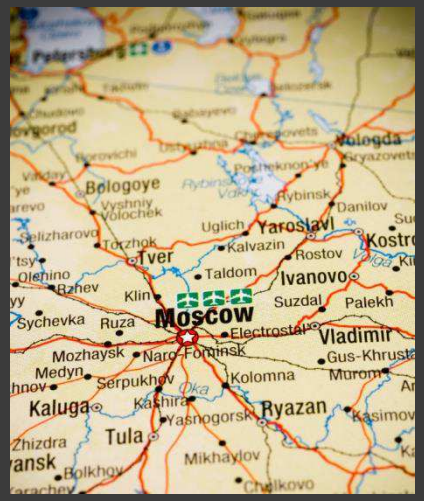
- Jurors' reactions to the strengths and weaknesses of your case also are a source of potential bias
- You must address both in design of voir dire and de-selection of your jury



APPROACH

- Understanding your jurors

  - Bias's
  - Attitudes



Understanding Jurors

- First seek to understand and then be understood
- Jury system unique
  - Entrusts most difficult disputes to people who are strangers and ill equipped
  - Child emperors

Understanding Jurors

- Experiences
- Attitudes
- Bias
- Tendencies
- View of the world
- Opinions
- Motives
- Process of information – do they understand?
- Rule of thumb – EAR method

Use the E.A.R Method

- Experience
- Attitude
- Rules (what did they learn as a result of this experience)

Use the E.A.R Method

- Experience
  - Have you or anyone close to you ever been stopped by the police for driving while impaired?
  - What happened as a result?

Use the E.A.R Method

- Attitude
  - How did you feel about this happening to you / someone close to you?

Use the E.A.R Method

- Rules (what did they learn as a result of this experience)
  - Were you satisfied with the end result of this incident?
  - Did you feel like you / close one were treated fairly throughout the process?

Understanding Jurors

- Jury Research – Key areas of bias
  - Governmental Agencies
  - Police
  - Intrusive Laws / Rules – ‘Libertarian bent’
  - Distrust / Ignorance of Science
  - Experience in the criminal justice system
  - Unrealistic Expectations

Understanding Jurors

- Jury Research – in Maricopa County (ongoing since 2006):
  - 68% of jurors have either been arrested / convicted for DUI, or someone close to them has been arrested or convicted.
    - Strong feelings of bias against the State is reported from 30% of those jurors.

Understanding Jurors

- How to uncover juror bias:
  - Experiences
  - Affiliations
  - Attitudes / Strong Feelings
  - Level of Education

Understanding Jurors

- Tendencies for Pro-State Jurors:
  - Safety Conscious
    - Worries about personal safety for themselves and loved ones.
      - ie. – wear seat belts, child car seats until age 8….
  - Have fewer than 2 moving violations in the past 8 years.
  - Do not drive motorcycles
  - Conservative / law and order types

Understanding Jurors

Understanding Jurors

- Tendencies for Pro-State Jurors:
  - Believes strongly in personal accountability and responsibility
  - Is trusting and believes in the system
  - Rule followers

Understanding Jurors

- Tendencies for Pro-Defense Jurors:
  - Those who drive for a living – DUI cases.
  - Those who drive more than 20,000 miles a year – DUI cases.
  - Risk takers.
  - Over identification with the defendant – sympathetic.
  - Looking for loop holes.
  - CSI / TV science.
  - Distrustful of government.
  - Is misinformed or has unrealistic expectations.

PREPARATION

- **Draft questions that specifically address case issues.**
  - **Be creative**
  - **Be relevant**
  - **Don’t be afraid to tackle the tough questions / issues**

-

PREPARATION

- Develop profiles
  - Characteristics
  - Jury chemistry

PREPARATION

Develop Profiles of Target Jurors

- **Think through the process – imagining the types of experiences and attitudes you want and don't want**
- **Create a profile – not just demographics for your target lists**
- **Most important is who you don't want**
  - **Example: risk takers; pro doctors; sympathetic**
  - **to special needs**
- **Only then do you create the list of who you hope to keep or accept**
  - **Water safety conscious; safety orientated; CPR certified; parental accountability**

PREPARATION

- Drafting questions
- Attorney Conducted Voir Dire
- Supplemental Juror Questionnaire – sell this to Court
- Combination of both

PREPARATION

- What do you want to know?
  - “What” questions reveal factual data
  - “Why” questions reveal a juror’s reasoning
  - “How” questions usually reveal a juror’s true feelings
    - Do you have strong feelings about the way the police enforce DUI laws?

- Attorney Conducted Voir Dire

PREPARATION

Drafting Voir Dire

- Identify experiences
  - How many of you have a pool that does not have a child safe fence?
- Inquire as to attitudes about experiences and case issues
  - Do you have strong feelings about the State of Arizona criminally prosecuting people for neglect, abuse or negligence of their child(ren)?
  - Do you or anyone close know or care for a person with Autism?

PREPARATION

- Open end versus close ended questions
- Drafting an outline of your voir dire
- Write them out
- Practice your questions
  - Are they well worded?
  - Are they offensive?
  - Are you following the EAR format?

Profiles of Characteristics

- Leader
- Experienced
- Sensitive
- Cautious
- Humble
- Idealistic
- Creative
- Sociable

- Trusting
- Calls self an expert
- Talker
- Reads instructions
- Civic minded
- Follower
- Arrogant
- Logical

- Suspicious
- Listener
- Wing it
- Naïve
- Selfish

EXECUTION

- Interpersonal Skills
- Are you a good listener?
  - #1 difficulty with voir dire

- Goal is to make them talk.
- Don’t go straight down the row, jump around…keeps jurors on toes and listening.
- Prompt juror candor

EXECUTION

MY CLIENT'S LIFE NOW RESTS IN YOUR CAPABLE HANDS.
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JURY DELIBERATIONS
DID ANYTHING HAPPEN AFTER "PLEASE RISE"?

EXECUTION

- **Trust**
  - **Building rapport**
- **What do you really want to know?**
  - **What/why/how**
- **Script and Outline**

EXECUTION

- **Voir Dire techniques:**
  - **Start broad – asking questions that appeal to the largest audience – then narrow in on jurors who you are unsure about or need more specific information.**

EXECUTION

- Voir Dire techniques:
  - Use the phrase – “do you have strong feelings about?”
    - Do you have strong feelings about using physical force to protect yourself or others?
  - Using voir dire to educate the jury.
    - BAC limit .08
    - Illegal to be impaired and be in Actual Physical Control
    - Prescription drugs impair….

Questions – digging for information

- Questions that uncover the characteristics of profiles
- Questions that address your bad facts
- Sources:
  - experiences
  - opinions, beliefs, and values
  - what they learned as a result
  - watch nonverbal communication

Demographics

- The jurors' backgrounds consist of a variety of information, including such factors as:
  - race,
  - gender,
  - occupation,
  - education, and
  - organizational membership. While it’s a starting point - You need much more
  - Background information comes primarily from judge voir dire (and in some cases, juror questionnaires)

Experiences

- Jurors have had a variety of experiences that may have shaped their viewpoints as they pertain to your case. Potential biasing experiences can be divided into several categories:
  - (a) experiences that lead to viewing the defendant and/or defense witnesses more favorably,
  - (b) experiences that lead to viewing the victim and/or the state's witnesses in a negative light, and
  - (c) experiences that lead to viewing the actions of the victim positively.

Similarities and Over-Identification

- Can jurors with similar backgrounds as a party (victim, witness or defendant) lead them to view the party or witness more or less favorably?
- Would coming from certain upper socioeconomic status groups lead to possession of more calloused, anti-victim attitudes?
- Ask the questions – don’t just assume!

General opinions

- General opinions refer to the more global views, values, and opinions that jurors hold.
  - These views can reflect personality characteristics or traits of jurors, such as beliefs in distributive justice or perceptions of control over their lives, or general views that may have an indirect connection to your case.
- While general opinions are usually less accurate than case-specific opinions in identifying bias, they are useful components in the search for bias.

Case-specific Opinions

- These opinions are directly related to some aspect of the case, such as the theme, circumstances of the case, or bias concerning a party or witness.
- These opinions have the potential to be more effective in identifying bias because they are more directly connected to the decisions that jurors will make.

The order is important

- Ask your questions in the order of their biasing power, starting with the factors that tend to exert the most bias, as follows:
  - (a) experience/relationships
  - (b) feelings
  - (c) thoughts and opinions.

DON'T PAINT A TARGET

- Introduce new voir dire topics with general questions about personal experiences when appropriate, but remember experience questions can paint the target for your opponent, so you must be careful.
- Always ask experience questions in the direction of negative biases

- Never follow-up on <u>favorable answers</u>. When a juror's answer favors your side of the case---you must absolutely <u>never ever</u> ask who else feels the same way or who else agrees as you will be painting targets for your opponent

- If someone says something that is bad for your case, don’t cut them off! *Find out who agrees with them.*
- Never ever try to find out who disagrees with a juror expressing an unfavorable or negative position, as you will be painting the target—the jurors who are favorable to your case---for your opponent.
- If someone says something that bodes well for your case, find out who disagrees with them.

Identify Bias – Target for Cause

- Bias is that which is so strong that it cannot be changed.
  - Best you can do is attempt to show basis for strike for cause
  - Rehab by the Court mostly ineffective – essential to watch body language of juror and use of language
  - Most that are not excused are on your immediate list for preemptory strike

What if Background is All You've Got?

- Recognizing the errors inherent in making generalizations based on gross background characteristics - sometimes we are unable to ask jurors directly about certain critical experiences or opinions:
- Background characteristics can serve as <u>indicators</u> of certain jurors
- If you are unable to investigate satisfactorily the jurors' views, you would not want to ignore certain background characteristics

The “Hard” Questions

- Should you be using a SJQ?
- Bench/private conference?
- Is it hard because you’re afraid of the answer?
- What do you really want to know?
  - Simplify
  - Identify the experience and follow with the attitude
  - What happened and how did you feel about it?

Questioning Techniques
Put your Interpersonal Skills to Work

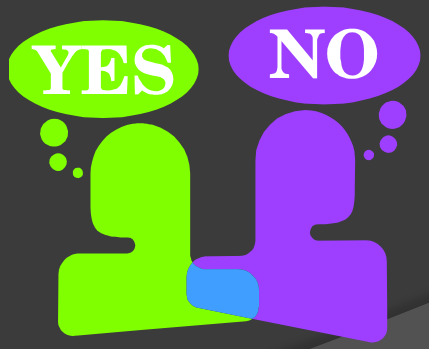
- The goal – make them talk
- Don’t go straight down the row… remember law school – keep jurors on their toes/no zoning out
- Narrow focus?
  - Struck or strike and replace method
- Promote juror candor
- Use the loop method

DO’S AND DON’TS

Foster Participation Early and Often

- Keep jurors involved and participating in the voir dire process, particularly when questioning is conducted in group format.
- Break the tendency for jurors to be reluctant to participate in the process by getting all jurors involved early.
- Use "breaking the ice" technique which has all jurors raise their hands at the start of voir dire.
- Ask questions that all jurors are required to answer affirmatively (e.g., asking how many jurors have lived in the area for the past two years).
- Once jurors are participating – keep them involved

- Try to avoid or use sparingly questions that call for a yes or no response. They are usually of little or no diagnostic value and often confound accurate juror diagnosis. Similarly, avoid conformity-biasing questions such as “Wouldn’t you agree…?”



Do not worry about poisoning the panel. It's better to hear the "bad stuff" out in the court room, so that you can deal with it, rather than have it come out in the jury room, where you have no control.

Your fear of "tainting the jury panel"

- not supported by jury research
- identify all targets is the goal.

- Avoid the temptation to use voir dire as an opportunity to indoctrinate your jurors.
- Introduce case themes instead
- Keep in mind that your primary goal is to surgically remove the bad jurors. If you fail to remove the dangerous jurors your case will die before you get it to the operating table.

Evaluating the Information

- Cause
- Preemptory strike
- Organize the information
  - Gut feeling
  - Not for inappropriate reasons
  - Some reasonable basis
- Adjust your expectations

Practical Aspects of Organizing the Information Obtained

- Assistance from co-counsel/2nd chair
- Paralegal
- Case agent
- Victim witness Advocate
- SJQ analysis
- Juror charts

- Using a rating system
  - Must not be static
  - +++
  - ++
  - +
  - 0
  - X
  - XX
  - XXX

LET'S TALK SJQS

Are they worth the work?

YES!

Benefits of Using a Supplemental Juror Questionnaire

- It encourages full disclosure by jurors
- It provides for privacy of individual disclosures
- Ensures responses from each and every juror
- Elicits full disclosure without tainting your jury or boring the other jurors
- Provides a “big picture view” of your jury panel
- Provides for jury selection strategy

I have an SJQ – now what?

- Overwhelming amount of information
- 1st – identify juror for cause – time saver
- SJQ sheets – get help/highlight and flag
- Ranking
- Identify follow up questions and design personalized questions
- Identify those that just have to go

Suppose you were a juror and were told that one side had the responsibility or burden of proving its case. If that side failed to prove its case according to the law, but you thought that side was right, what do you think you would do?

_____Vote for side I thought was right

_____Follow the instructions of the law

Have you ever served as part of an investigative committee assigned the task of determining if a person's behavior was proper (for example, to see if someone broke the rules at work, church, etc.)?

_____Yes _____No

IF YES: Please explain how you conducted your investigation

_____

_____

_____

In the course of your employment are you or have you been required to conduct internal investigations on fellow employees? _____Yes _____No

IF YES: Please describe the circumstances._____

_____

_____

_____

How serious a problem do you think crime is in your neighborhood?

_____Very serious _____Serious _____Not so serious

Have you ever moved or considered moving because you thought crime was a problem in your neighborhood? _____Yes _____No

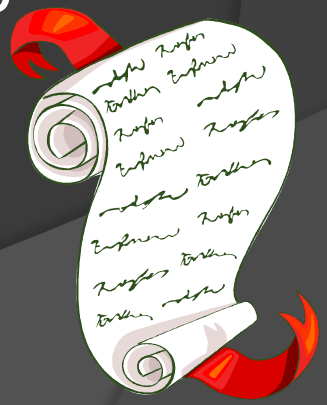
IF YES: Please explain._____

_____

_____

_____

- Use a juror rating sheet that allows you to record and rate jurors' responses in terms of their biasing power.
- Remember: Experiences, including the experiences of family, friends, co-workers and membership groups (etc.), trump all other factors in biasing power.



Deselecting your Jury

- Voir dire only
- SJQ and Voir Dire
- Cause
- Identification of:
  - Those who don’t work well in a group
  - Fit your profile/fit your pro-defendant profile
  - Dishonest jurors
  - Jurors who won’t/can’t accept the facts of the case

Organize your Analysis

NO	NAME	SJQ RATING	Voir Dire FINAL RATING
1	John Smith	xxx	X
2	Amy Sexton	++	X
3	Betty Woods	0	+
4	Donald Trump	xxx	xx

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Learn from the Past

- Post Verdict Interviews
- Preferable to be done by someone other than yourself – become the student
  - Check anger and ego at the door
- Always ask to interview the jurors
- Written questionnaires to jurors – remember to include self addressed stamped envelope
- Learn from mistakes – honest evaluation of feedback
- Share with training supervisor for future training

Latest Research

- Media
- Cell phones
- Social Networks
- Reality Stars
- Blogs
- “Real World” Syndrome
- Unrealistic expectations with technology
  - CSI Effect
- Jurors and Google
  - Used to 24 hour access to information
- Juror Misconduct on the rise

Jurors: Now & the Near Future

- Cynical
- Impervious
- Suspicious
- More cautious
- More social
- Information starved
- Voyeuristic
- Views the glass as half full

ZIMMERMAN JUROR GETS BOOK AGENT

One of the six anonymous jurors who acquitted George Zimmerman of second-degree murder in the death of Trayvon Martin has signed with a literary agent to write a book about the case less than 48 hours after the verdict.

The woman, known only as Juror B37 under court order, will enlist her husband, an attorney who works in the aerospace industry, as her co-author, agent Sharlene Martin said in a statement Monday.

“My hope is that people will read Juror B37’s book … and understand the commitment it takes to serve and be sequestered on a jury in a highly publicized murder trial and how important, despite one’s personal viewpoints, it is to follow the letter of the law,” Martin said.

“It could open a whole new dialogue about laws that may need to be revised and revamped to suit a 21st century way of life,” she added. “The reader will also learn why the jurors had no option but to find Zimmerman not guilty due to the manner in which he was charged and the content of the jury instructions.”

The jurors, who were sequestered during the trial, deliberated about 16 hours before finding Zimmerman not guilty. He said he fired his 9mm pistol in self-defense after Martin, who did not have a gun, attacked him on Feb. 26, 2012 in Sanford, Fla.

The verdict has already sparked several large rallies and marches and there are plans for a 100-city vigil next weekend. The agent said the juror has not decided whether to reveal her identity “given the sensitivity of the verdict and the outpouring of mixed reactions by the American public.”

The woman has lived in the Sanford, Fla., area for 18 years and has two daughters – a 24-year-old pet groomer and a 27-year-old college student. During jury selection, she said she had been called for jury duty four times previously but never selected to sit on a case.

Martin has represented other authors involved in big trials, including the O.J. Simpson, Amanda Knox and Jodi Arias cases.

George Zimmerman has sued NBC Universal for defamation. The company strongly denies the allegation.

LEARNING FROM MISTAKES

- Watch others / others watch you
- Talking to jurors post verdict
- Compile data
- Acceptance of mistakes
- Good facts versus bad jury….

Voir Dire Bank

- General Information
- Domestic Violence
- Crimes Involving Weapons
- Crimes Against Children
- Crimes Involving Automobiles
- Repeat Offenders
- Crimes Involving Minority Groups
- Crimes Involving Animals
- Sexual Assault
- Crimes Involving Impairment – Drugs/Alcohol
- Media
- Civil Cases Pending as a Result of Criminal Charges
- Safety and Self Defense
- Schools

- Doctors and Health Issues
- Crimes Involving Drowning
- Crimes Involving Strangulation
- Identification/Memory
- Death Penalty
- DNA
- Immigration
- Identity Fraud
- Experts
- Informant/Immunity
- Athletes
- Gambling
- Investigation Issues
- Conspiracy

THANK YOU FOR YOUR TIME AND ATTENTION

Questions?